methods of CIC delivery that were more complex than using the TNS parameter. The RBOCs exercised their dominance over the standards committee to permit only the development of a new parameter instead, the Carrier Identification Parameter (CIP). MCI and the other IXCs were thereby forced to accept this new CIP parameter in place of the TNS parameter. The process of developing this new parameter alone has effectively delayed providing a CIC-delivery capability because implementation would now require every SS7 switch to generate and recognize the new parameter, as opposed to modifying an existing signaling element. It was yet another RBOC hurdle created in order to make the provision of this capability more complex to implement, thereby leading to the effective denial of the IXCs' request.

20. The next hurdle in the process was to return to the ICCF and request the RBOCs to provide implementation information. Although the technical description had been stable for some time, the RBOCs initially refused[8/] to provide implementation information, stating that the standards activity was still in progress, that a prioritization of capabilities

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[7/](...continued)
parameter be passed unconditionally between the local and interexchange networks. MCI's contributions T1S1.3/89-03521 and T1S1.3/98-09504 described the use of a new SS7 parameter for delivery of CIC information.

[8/] MCI requested an exchange carrier report at ICCF meeting #20 in August, 1990 to provide implementation details concerning CIP which was included in the ANSI issue 2 draft ISUP standard. There had been no technical challenges against CIP which could have suggested that technical issues existed.

was required and an assessment of costs and availability was needed before any response could be provided. RBOC responses at a subsequent ICCF meeting provided little assurance that RBOCs were addressing this issue. In fact, several RBOCs stated that the standards process was still unresolved. Other comments ranged from there being no available vendor information to concerns over technical requirements not being available. Other RBOC responses questioned the IXCs' desire for the capability, despite all of the IXCs present expressing their desire and support for the CIP capability.

21. Seven years of persistent effort have elapsed in pursuit of CIP delivery. This includes an extensive tour of the forums, standards committees, Bellcore's requirements process, and one-on-one meetings. However, CIP delivery still has not been made available and there are no certain implementation timelines. This is a sad commentary since it could have been a minor addition to the original SS7 signaling protocol and could have been available with the initial SS7 roll out.

22. Another example of how the RBOCs can effectively use the forums and standards process to delay service capabilities to other entities is with 555 access arrangements. MCI and other entities, including ESPs, requested and received 555-XXXX line numbers from the North American Numbering Plan Administrator (NANPA) in June, 1994. This followed over twelve

months of intensive work by the Industry Numbering Committee (INC) to develop assignment guidelines for the 555 resource.

23. The RBOCs waited[9/] until after the assignment guidelines were complete to consider development of the access arrangements. It was only after the assignments were made by NANPA that it became publicly known that the RBOCs apparently did not have and were not yet developing the technical means to route, screen, and bill 555 calls. The industry is now developing access arrangements. But, access customers and ESPs who have numbers assigned are currently forced to consider differing, varying and undesirable technical approaches from the RBOCs. It should be noted that the RBOCs already have their own 555 applications and routing in place. Because of the RBOCs' failure to disclose their inability to provide 555 access arrangements, MCI and other IXCs as well as ESPs have been delayed in implementing new services.

24. A similar example of where MCI has encountered RBOC delay strategies in offering new service features and capabilities concerns a national abbreviated dialing plan. BellSouth, in particular, which introduced and co-sponsored development of abbreviated dialing capabilities for over two

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[9/] Telco Planning introduced the issue of the development of 555 access arrangements to the IILC in February, 1994 as Issue #046 and to the ICCF in March, 1994 as Issue #277.

years at the IILC,[10] initially supported MCI's concept of developing a national abbreviated dialing plan at the Industry Numbering Committee (INC).[11] Then, after co-sponsoring the issue at the IILC and six months after supporting the issue when introduced at the INC, BellSouth explicitly withdrew their support[12] for the capability. Hence, BellSouth's withdrawal of support has delayed progress on the development of new service opportunities and puts in jeopardy the development of an abbreviated dialing plan.

25. Other RBOCs have opposed abbreviated dialing plan development for reasons ranging from inadequate numbering resources being available to meet industry demand (Bell Atlantic), to there being inadequate demand for such resources (NYNEX). BellSouth has asserted its wish to assign abbreviated codes for use in its own territory and therefore would not need a national plan, which would afford it less control of the resource. RBOC sponsorship and support of this issue in both the IILC and the INC has misled ESPs and other carriers interested in the development of abbreviated dialing capabilities, by initially causing them to believe that

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[10] BellSouth's issue was introduced into the IILC on April 23, 1992 (Issue #036), requesting developments of abbreviated dialing access.

[11] BellSouth's June 1, 1994 contribution to the INC stated support for the plan. MCI's July, 1994 contribution to the INC also stated support for the plan.

[12] BellSouth's December 13, 1994 contribution to the INC stated opposition to the plan.

implementation was a realistic expectation.

26. Another example of RBOC actions that have misled their customers is in the area of telecommunications fraud prevention matters. The Network Operations Forum (NOF) has, as one of its standing committees, the Toll Fraud Prevention Committee (TFPC). The TFPC has been discussing the fraud prevention issues arising from call forwarding for two years, generating much attention from both IXCs and LECs.

27. These deliberations appeared to have resulted in TFPC recommendations that addressed the call forwarding fraud problems. While the TFPC was conducting its deliberations, however, the RBOCs were filing tariffs that did not address the fraud risks, and since then, two RBOCs -- including Pacific Bell, whose representative on the TFPC is the co-chair -- submitted tariffs ignoring the TFPC recommendations. In response, the IXCs have found it necessary to oppose the tariffing of this service. Thus, the efficiency and "good faith negotiation" utility of the industry forum process is questionable, at best. It is difficult, if not impossible, to understand what rationale exists for such an approach, other than an RBOC strategy to delay closure of issues, or delay saying no. It is evident that even after two years of TFPC discussions, the RBOCs apparently have no intention of supporting the agreements they made in the TFPC.

28. These dynamics are not limited to the domestic standards arena. The RBOCs can also influence the international standards process. For example, the U.S. position to the International Telecommunications Union (ITU-T) is disproportionately influenced by the RBOCs, through their ability to dominate the consensus process at Committee T1, which originates many of the U.S. contributions to the ITU-T.

29. A specific example illustrates how the RBOCs can impede those who espouse positions inconsistent with their strategies and plans. International carriers, including MCI, have been actively working to advance the standardization of a capability called Global Virtual Network Service (GVNS) in the ITU-T. The GVNS service will provide a global standard procedure and protocol at the international interface to facilitate interconnections of carrier specific, virtual private network services between countries. The RBOCs are not currently international carriers, and thus one would expect that they would have a neutral position on the development of GVNS capabilities. However, the exact opposite is true, with the RBOCs and Bellcore having argued at T1 against the positions of international carriers, such as MCI and AT&T, who were attempting to develop proposed positions to the U.S. State Department. The RBOCs and Bellcore succeeded in delaying GVNS technical contributions several times in Committee T1 standards

from going forward as U.S. positions[13/] to ITU-T.

30. The RBOCs' dominance of standards and forums is further facilitated through another industry association, the United States Telephone Association (USTA). The USTA structure affords the RBOCs the opportunity to collectively plan and discuss their positions concerning industry technology, numbering resources, network operations, administration and LEC services. Then, the USTA position is carried into the industry standards and forum meetings, where the USTA position, while touted as being made on behalf of all local exchange carriers, is essentially another RBOC voice.

III. The RBOCs Are Able To Numerically Dominate The Industry Standards and Forum Process Through Leadership Positions and By Attendance

31. The RBOCs dominate leadership positions in the standards and forum process. Per the T1 Officers Directory, January 20, 1995, the RBOCs held 36 leadership positions, and the IXCs held 14. Of these positions, there are 14 RBOC chairs and only 2 IXC chairs. As a result, the RBOCs have the ability to steer events toward an outcome which is consistent with their business interests. The RBOCs also dominate the standards and forums process through attendance.

[13/] The RBOC and Bellcore position concerning the GVNS standard was to attempt to force the use of the E.164 numbering plan in the service description. International providers required a network specific numbering plan to identify the carrier for routing purposes.

32. The RBOCs' domination by numbers is particularly effective at T1's working group meetings, because decisions reached at these working groups are determined by the attendees' "consensus." The working groups are subcommittees tasked by T1 to resolve most of the technical issues arising in the standards process. The RBOCs and Bellcore in this environment are able to effectively delay or prevent standards development, or drive their own objectives at the working group level by the sheer number of representatives they send to meetings.[14/] In addition, the RBOCs are benefited by the additional voices in attendance at these meetings through the representatives of their associations.[15/] Their massive collective purchasing power also permits them to influence positions taken by vendors.

33. By contrast, decisions on leadership and standards approval are made by a vote of member companies at the governing technical subcommittee T1 and T1 advisory levels

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[14/] For example, the following numbers are representative of traditional attendance levels at standards meetings. In a sample of working group meetings from 1987 to present, the RBOCs provided, on average, nearly 3 times the number of attendees to each meeting throughout the period as the IXCs. The T1S1.3 working group meeting in October 1988 had five times the number of RBOC attendees (39 representatives) to each IXC attendee (7 IXC representatives). The T1S1.1 working group meeting in July 1994 had 24 RBOC and 4 IXC representatives. The T1S1 meeting in October 1994 had 13 RBOC and 7 IXC representatives. It should also be noted that it is not uncommon for Bellcore attendees alone to outnumber the IXCs (e.g., T1S1.3 working group in July 1989 had 8 Bellcore attendees but only 6 IXC attendees).

[15/] USTA and National Exchange Carrier Association (NECA) are examples.

rather than by consensus. However, even with voting by member companies at these levels, it is both very difficult and time consuming to change the outcome, because the consideration and resolution of concerns are sent back to the working group meetings, where RBOC dominance can control the outcome. The RBOCs do not dominate committee T1 with their voting memberships. However, their leadership positions, industry affiliation, and Bellcore ownership provide the dynamics to dominate the outcome of what happens and what is prevented from happening.

34. The ability of the RBOCs to dominate industry meetings[16/] is amplified within the industry forums, where the resolution of issues is determined solely by consensus without an accompanying voting process. Thus, the result is that ESPs have limited opportunity to influence the outcome of issues in the forums and in standards. If the RBOCs do not want something to happen, it does not happen.

IV. The Bellcore Requirements Process is Also Subject to Abuse By the RBOCs

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16/ For example, the following numbers are representative of traditional attendance levels at industry forums. In a sample of NOF, ICCF, INC and CLC meetings, the RBOCs provided, on average, greater than twice the number of attendees to each meeting as the IXCs. In March 1995, the NOF #47 general session meeting had 20 RBOC and 5 IXC representatives. In March 1991 the ICCF #22 meeting had 36 RBOC and 14 IXC representatives. In November 1994, the ICCF #33 meeting had 16 RBOC and 8 IXC representatives. In March 1995, the INC meeting had 12 RBOC and 5 IXC representatives. At the February 1995 CLC meeting, all 7 RBOCs, two independent LECs and USTA were represented, but only three IXCs were present.

35. Not only are the RBOCs able to delay the development and implementation of capabilities and control, by their dominance, the outcomes within the consensus process, but they are also able to control the development of technical specifications, which direct their equipment suppliers.

36. Bellcore's generic requirements,[17/] now referred to as "GR-CORE", accompanied by their corresponding Issues Lists Reports (ILRs), have not addressed the concerns of ESPs. The Bellcore requirements process presents a significant obstacle to the orderly provision of new services. This is because, despite industry standards and forum agreements, there is no assurance that such agreements will be incorporated into the technical specification that is developed by Bellcore on behalf of its owners, the RBOCs. Further exacerbating the problem is the Bellcore disclaimer contained in each technical publication stating that each Bellcore client may make changes in any portion of the specification. Thus, an ESP may never know with any degree of certainty whether a standard or industry forum agreement will be implemented, or be implemented in the same manner across all access networks. In contrast, the RBOCs have a robust infrastructure for coordinated planning through their Bellcore, USTA and other national services coordinating groups. They selectively use these groups when they want to make something happen and when they do not.

[17/] Previously, Bellcore used a Technical Advisory (TA) and Technical Requirement (TR) process to interact with industry and the vendor community.

37. Bellcore claims that its new generic requirements process provides an opportunity for industry to have input into the requirements process and avoids unnecessary problems associated with capability development.[18/] Bellcore refers to this as an early interaction process, where equipment suppliers and users, such as ESPs, could participate in the document development process by providing input. In reality, this input from other entities carries only the weight that the RBOCs collectively decide to attach, and affords no commitment by Bellcore or the RBOCs to include such input in the technical specifications. It is the RBOCs alone that determine approval of what is or what is not contained in these Bellcore de-facto standards documents.

38. The generic requirements process is essentially the RBOCs' private standards setting process run by Bellcore to circumvent the industry standards or forum arenas. It provides a continuous opportunity to control business opportunities for ESPs and to maintain the local monopoly bottleneck.

39. Industry issues and problems concerning Bellcore or other technical documents presented for resolution can be arbitrarily dismissed by the RBOCs if they are inconsistent with RBOCs' business objectives and/or strategic plans.

[18/] Bellcore announces new Generic Requirements process, Bellcore Digest, June, 1993.

Control of the de-facto standards setting process provides the convenience of ultimate control of what technical designs are made available.

40. An example of the RBOCs acting in an arbitrary and discriminatory manner concerns the issuance of Screen List Editing (SLE) service requirements in 1994. The SLE service provides end-users with the ability to change a switch resident table, which controls various call management features, for example, selective call acceptance or call rejection. Non-call associated SS7 signaling messages are used to facilitate this functionality. In the revised Bellcore document (TA-NWT-000220, Issue 4), the RBOCs extended the SLE service on an interLATA basis, and specified that the routing of the SS7 messages would be transported via a network chosen by the RBOC, and not based on equal access presubscription. Equal access presubscription would utilize the "Intermediate Signaling Network Identification" (ISNI) capability.

41. The RBOCs slow rolled the development of ISNI at Committee T1. However, after years of delay, they finally decided not to oppose it any longer. The RBOCs also eventually stopped opposing inclusion of ISNI in Bellcore's generic requirements documents. Hence, it would seem reasonable to expect that they intended to implement ISNI for services which would enable the routing of non-call associated signaling messages across network boundaries. However, the RBOCs

arbitrarily determined that the SLE service would not utilize ISNI when they issued revised interLATA Bellcore requirements for SLE.

42. Moreover, when MCI brought the SLE issue to the attention of the ICCF #30 in November, 1993 requesting that the requirements be further revised to include routing of the interLATA messages based on equal access, the RBOCs refused to accept the issue on the grounds that the routing of these messages was based, and ought to be based, on the RBOCs' business decisions. A second request by MCI to address this issue was brought to ICCF #31 in March, 1994 by demonstrating how the Modified Final Judgment (MFJ) applied to this issue. The RBOCs again refused to address the issue, and stated that "they consider the routing of internetwork interLATA non-call setup to be official communications and thus a business policy decision the LEC is entitled to make."[19/] Subsequent attempts at the ICCF and CLC[20/] to create an industry agreement to define "official communications" were also unsuccessful and refused consideration by the RBOCs. This is another example of the RBOCs dominating the industry consensus process and controlling the de-facto design of the interconnected networks and supported services. The power of their collective opposition prevented the issue from even being considered, thus

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[19/]ICCF meeting record, ICCF #31, March 16-17, 1994, page 352.

[20/]ICCF #32 meeting, July, 1994 and CLC meeting, September, 1994.

precluding any potential resolution. This problem is not limited to SLE and is indicative of the anticompetitive behavior of the monopolistic access providers.

43. ESPs cannot be expected to travel through the maze of industry discussions, meetings and standards processes when no clear direction and timetables exist for true unbundling. The RBOCs have established a strategy to deny true unbundling through a continuum of tactical hurdles, one after another. For example, their closed AIN architecture was not designed to provide the foundation to build an open network access environment. This resulted in the need to create new issues at the IILC. This is just another hurdle to opening the RBOC networks beyond a token level. Based on these experiences, it is clear that the RBOCs must be required to unbundle their networks for ESPs and other competitive service providers, since they will never do so on a voluntary basis.

Further Affiant saith not

Peter P. Guggina

Subscribed and sworn to before me
this 3 day of April, 1995.

Notary Public

SHERI HAYES
NOTARY PUBLIC
State of Texas
Comm. Exp. 10-23-96

ONA:
A PROMISE NOT REALIZED -- REPRISE

HATFIELD ASSOCIATES, INC.

APRIL 6, 1995

ONA:
A PROMISE NOT REALIZED -- REPRISE

HATFIELD ASSOCIATES, INC.

APRIL 6, 1995

ONA: A PROMISE NOT REALIZED -- REPRISE

The basic question the Commission is asking in this proceeding is whether changes in technology and markets since the original Computer III decisions justify structural relief for the RBOCs even though fundamental network unbundling has not taken place. This paper examines this issue and reaches the following major conclusions:

- The public interest in fundamental network unbundling has increased in recent years. The primary beneficiaries identified at the time of the Computer III decision, the Enhanced Service Providers (ESPs), would still benefit from true unbundling. In addition, the availability of unbundled network components has taken on a greatly increased significance as a prerequisite for a true market test of the proposition that local telephone competition can develop.

- The original vision for Open Network Architecture (ONA) has not been achieved. Granting RBOCs relief when they have not even complied with their original unbundling promises/obligations creates exactly the wrong incentives for further unbundling in the future.

- There have been significant technological changes in local networks since Computer III. As a consequence, full unbundling is both more feasible and more important.

- The RBOCs have ample opportunities to engage in discriminatory and anti-competitive practices against their potential competitors. These arise from the technological changes that are taking place.

- Other regulatory safeguards are useful, but will not prevent abuses. None of them -- incentive regulation, cross-subsidy and accounting rules, price caps, or the tariff review process -- has sufficient teeth, particularly in the face of inadequate Commission resources. This further heightens the importance of effective local exchange competition and the unbundling on which that competition will rely.

- Competition in the enhanced services market does not reduce the need for further unbundling or reduce the need for other safeguards.

- Based on the foregoing, a cost/benefit analysis demonstrates that the Commission should not grant the RBOCs any relief from structural separation requirements. Further relief will not help to achieve the goals of healthy, dynamic basic and enhanced services markets.

I. THE PUBLIC INTEREST IN FUNDAMENTAL NETWORK UNBUNDLING HAS INCREASED IN RECENT YEARS

Computer III was originally intended for the benefit of the ESPs. At the time of the original decision in 1986,[1] local telephone competition was barely a dream. As will be discussed in Section VI, the ESPs have no less a need for unbundled services today than they did in 1986. But an equally important application of unbundled network elements today is to support local exchange competition. Local competition is still far from a reality. But changing technology has at least increased the prospects for the development of competition. If competition is to become a reality, potential competitors require the availability of, and access to, unbundled components of RBOC networks.

A. Local Exchange Competition Requires Unbundling

Potential RBOC competitors include Competitive Access Providers (CAPs), cable companies, Personal Communications Services (PCS) providers, and electric utility companies. None of these classes of potential competitors possess all the components of a telephone network. CAPS can use their fiber rings in some instances for both distribution and interoffice facilities, but they have very little switching or signaling network capabilities. Nor are their transmission facilities by any means ubiquitous. Rather, only a limited number of customers are proximate to the CAP rings, so CAPs would benefit greatly from the ability to utilize unbundled local loops to extend their reach much further from their rings.

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[1] Amendment of Section 64.702 of The Commission's Rules and Regulations (Computer III) Report and Order, CC Docket No. 85-229, 104 FCC 2d 958 (1986).

Cable companies and electrical utilities may be able to provide alternative distribution facilities -- that is, the portion of the network between their customers' premises and the equivalent of the central office -- but might not possess either interoffice transmission or switching. PCS providers reach the premises over the airwaves, but the limited range of a given radio site requires those sites to be distributed throughout the service area. Thus the provider may require backhaul facilities between its radio sites and a central location; it may also require switching and interoffice transmission.

Thus, the various "holes" in the facilities of each potential provider may be filled by the unbundled network elements of local exchange providers. To the extent that RBOC networks possess capabilities that are essential to competition, and those capabilities can be provided on a separate, or unbundled, basis, RBOCs should be required to make such unbundled elements available to potential local exchange service providers. What is more, they will benefit from the increased network usage that will result from others' use of the network elements. RBOC plans for future technology deployment should take into account the need for, and beneficial effects of, network unbundling. Thus the definition and implementation of unbundling is not a "static" exercise, but a "dynamic" one, to be regularly monitored by the Commission to insure compliance with the spirit and letter of the unbundling concept. Third parties should not be required to initiate action by the Commission, as happened in the case of the Advanced Intelligent Network (AIN) proceeding discussed below.

Another aspect of the dynamic nature of unbundling is that it should be responsive to the evolving needs of the marketplace. Thus, for instance, inasmuch as a PCS provider's need for backhaul facilities can be satisfied by the purchase of only the feeder, or loop carrier, portion of

the telephone company outside plant, it should be able to purchase just that component of the network, barring any technical or financial reason why it may not be feasible for RBOCs to provide that component.

B. There Is Little or No Local Competition Today

If past Commission proceedings are a reliable guide, the RBOCs will argue that local exchange competition is already well-developed. They will conclude that, as a consequence, the ESPs are no longer dependent on the RBOCs for access to their customers, so it is not necessary to impose ONA requirements on the RBOCs. The truth, however, is quite different. There is, in reality, virtually no local telephone competition today and it will be many years before significant competition does emerge. Nationwide, competitors have captured less than two percent of the exchange access business and a much smaller percentage of the local exchange business.[2]

The RBOCs sometimes rely on mere recitation of newspaper headlines or trade press articles describing the plans or intentions of potential entrants.[3] While these media reports are certainly evidence that there is a great deal of interest in local exchange competition, the facts

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[2] The discussion in the following paragraphs focuses on the structure of the local telephone market. Analysis of conduct and performance in the market also demonstrates the lack of competition. See Declaration of Daniel Kelley (Kelley Declaration), MCI's Initial Comments to the Department of Justice Concerning Motion to Vacate the Judgment, U.S. v. Western Electric, Civil Action No. 82-0192 (D.D.C.), December 4, 1994 (MCI Comments to DOJ), Exhibit 4.

[3] See Affidavits of Jeffrey M. Perloff and Larry S. Karp, pp. 29-43, and Oliver E. Williamson, pp. 7-8, Motion of Four RBOCs to Vacate the Decree, U.S. v. Western Electric, Civil Action No. 82-0192 (HHG), July 6, 1994 (Motion of Four RBOCs), Appendices 30 and 44 respectively.

show that there is little actual investment, and even less actual competition. The press accounts can just as easily be taken as evidence that local exchange markets are not performing competitively today. If local markets were performing competitively, there would be less interest on the part of potential entrants.

That there is virtually no local exchange service competition anywhere in the U.S. today is easy to demonstrate. When a family or business moves into a new locality, or moves within the locality, it must contact the local monopoly RBOC to obtain telephone service. Even if a consumer could order a telephone line from a company other than the incumbent monopolist, the competitor could not duplicate the incumbent's service.

An essential characteristic of local telephone service is the ability to reach, and be reached by, many other individuals and businesses in the community. Only the incumbent has this existing network of customers. The incumbent would either originate or terminate most of the calls, leaving the entrant dependent on physical interconnection with the incumbent, as well as on the terms and conditions for this interconnection.[4] In other words, even if competitors gradually increase market share as systems are built and customers are converted, for the foreseeable future, most calls placed on the new networks would have to be jointly supplied by the new entrant and the incumbent. As a result, since the original ONA decision, network interconnection has emerged as an important new form of access to RBOC networks.

In most states, the feasibility of local exchange competition is an academic question. Local exchange competition is simply not allowed. Even where allowed, it has barely started.

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[4] See Declaration of Nina Cornell, MCI Comments to DOJ (Cornell Declaration), Exhibit 1, at pp 6-8.